

GORDON H. DePAOLI  
Nevada State Bar No. 195  
DALE E. FERGUSON  
Nevada State Bar No.4986  
WOODBURN AND WEDGE  
6100 Neil Road, Suite 500  
Reno, Nevada 89511  
Telephone: 775 / 688-3000

Attorneys for WALKER RIVER IRRIGATION  
DISTRICT

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

WALKER RIVER PAIUTE TRIBE,

Plaintiff-Intervenor,

v.

WALKER RIVER IRRIGATION DISTRICT,  
a corporation, et al.,

Defendants.

) IN EQUITY NO. C-125

) SUBFILE NO. C-125-B

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UNITED STATES OF AMERICA,  
WALKER RIVER PAIUTE TRIBE,

Counterclaimants,

v.

WALKER RIVER IRRIGATION DISTRICT,  
et al.,

Counterdefendants.

**I. Introduction.**

By Joint Motion, the United States, Walker River Paiute Tribe (the "Tribe") and Mineral County have requested the Court to schedule a status conference in Subfiles C-125-B

1 and C-125-C “to consider a number of issues that have been pending before the Court for some  
2 time” (the “Request for Status Conference”). Doc. 1591. The Request for Status Conference is  
3 captioned as though these separate Subfiles have been consolidated. Moreover, the Request for  
4 Status Conference describes the Subfiles as “related C-125 proceedings.” Doc. 1591 at 2-3.  
5 There has been no such consolidation, and except to the extent that counsel and some of the  
6 parties are common to both proceedings, Subfiles C-125-B and C-125-C are not related.  
7 Moreover, the current status of Subfile C-125-B is vastly different than that of C-125-C. A  
8 very brief history of each follows.  
9

10 **II. The Claims of the United States and Walker River Tribe - Subfile C-125-B.**

11 Subfile C-125-B involves the claim of the United States and the Tribe for additional  
12 water rights for the Walker River Indian Reservation (the "Reservation"). Among other things  
13 in C-125-B, the United States and Tribe seek recognition of a right to store water in Weber  
14 Reservoir, and a federal reserved water right for up to 167,460 acres of land added to the  
15 Walker River Indian Reservation in the 1930s.  
16

17 In addition to seeking a right to store water in Weber Reservoir and a water right for  
18 lands added to the Reservation in the 1930s, the Tribe seeks recognition of a federal reserved  
19 water right to use groundwater on Reservation lands including those lands added to the  
20 Reservation in the 1930s. The United States, in addition to seeking a right to store water in  
21 Weber Reservoir and a water right for lands added to the Reservation in the 1930s, seeks a  
22 groundwater right for use on the Reservation, and for federal reserved and other water rights for  
23 the benefit of the Yerington Paiute Tribe, Bridgeport Paiute Indian Colony, Garrison and  
24 Cluette allotments, certain other individual allotments, the Hawthorne Army Ammunition  
25 Plant, the United States Department of Agriculture (Toiyabe National Forest), the United States  
26 Marine Corps and the Bureau of Land Management.  
27  
28

1 After extensive briefing, on April 19, 2000, the Court entered the Case Management  
2 Order ("CMO"). *See*, Subfile C-125-B, Doc. 108. In the CMO, the Court recognized that the  
3 case as a whole is simply too big and too complex to process on a reasonable basis without  
4 bifurcation and other management. It, therefore, entered an order to manage the case.

5 The CMO bifurcates the claims of the Tribe and United States for the Walker River  
6 Indian Reservation (the "Tribal Claims") from all of the other claims raised by the United  
7 States (the "Federal Claims"). Except as expressly provided in the CMO, all discovery and  
8 other proceedings in the action are stayed. CMO, p. 4, lns. 20-24; Doc. 108. The CMO  
9 requires the Tribe and United States to serve their amended pleadings and related service  
10 documents on and thereby join numerous individuals and entities who hold surface and  
11 underground water rights within the Walker River Basin. It groups these individuals and  
12 entities into nine different categories. CMO, pp. 5-6; Doc. 108.

13 The CMO expressly provides that no answers or other pleading will be required except  
14 upon further order of the Magistrate Judge. It also provides that no default shall be taken for  
15 failure to appear. CMO, p. 12, lns. 22-25; Doc. 108.

16 The CMO divides the proceedings concerning the Tribal Claims into two phases. Phase  
17 I will consist of "threshold issues as identified and determined by the Magistrate Judge." Phase  
18 II will "involve completion and determination on the merits of all matters relating to [the]  
19 Tribal Claims." CMO, pg. 11, lns. 11-18; Doc. 108. Additional phases of the proceedings will  
20 "encompass all remaining issues in the case." *Id.*, p. 11, lns. 25-26.

21 The identification of threshold issues is left to the Magistrate Judge, and those issues  
22 shall "not be finally resolved and settled by the Magistrate Judge until all appropriate parties  
23 are joined." CMO, p. 9; Doc. 108. Included among the possible threshold issues to be  
24 considered for inclusion by the Magistrate Judge are issues related to the Court's jurisdiction  
25 and equitable defenses to the Tribal Claims. *See*, CMO, pgs. 9-11; Doc. 108.

1 The CMO also directs the procedures to be followed in connection with the disposition  
 2 of the threshold issues. First, it allows for discovery on those issues. Second, it allows for  
 3 written discovery concerning the bases for the Tribal Claims. It stays all other discovery.  
 4 *CMO*, p. 13, lns. 4-15; Doc. 108. It provides for disposition of the threshold issues by motion,  
 5 evidentiary hearing, or both. *Id.*, p. 13, ln. 16 - p. 14, ln. 2.

6  
 7 Prior to March of 2009, the Magistrate Judge had begun the process to identify the  
 8 threshold issues in connection with Subfile C-125-B.

### 9 **III. The Mineral County Motion to Intervene - Subfile C-125-C.**

10 Subfile C-125-C involves an October 25, 1994 motion of Mineral County to intervene  
 11 in the proceeding which adjudicated and now administers water rights on the Walker River  
 12 system. *See, United States v. Walker River Irrigation District*, 11 F.Supp. 158 (D.Nev. 1935),  
 13 *rev'd* 104 F.2d 334 (9th Cir. 1939). Mineral County seeks permission to file an "Amended  
 14 Complaint in Intervention" and a Motion for Preliminary Injunction. Mineral County's  
 15 proposed "Amended Complaint in Intervention" seeks "an adjudication and reallocation of the  
 16 waters of Walker River to preserve minimum levels in Walker Lake" under the public trust  
 17 doctrine. To achieve that goal, Mineral County seeks "the right to, at least, 127,000 acre feet of  
 18 flows annually reserved from the Walker River." The Motion for Preliminary Injunction asks  
 19 the Court to require water right holders on the Walker River system to allow 260,000 acre feet  
 20 of water to reach Walker Lake in 1995. It asks that thereafter water right holders be enjoined  
 21 so that 240,000 acre feet of water reaches Walker Lake annually until this litigation is  
 22 concluded.

23  
 24 On February 9, 1995, the Court entered an Order Requiring Service of and Establishing  
 25 Briefing Schedule Regarding the Motion to Intervene of Mineral County (the "Service Order").  
 26 The Service Order required Mineral County to serve all claimants to the waters of Walker  
 27 River with its filing by May 10, 1995. Because Mineral County has sought and received  
 28

1 numerous extensions of time to complete service as originally ordered by the Court, the  
2 original schedule established by the Court with respect to the Motion to Intervene is no longer  
3 meaningful.

4 The Court has not entered a case management order in this Subfile.

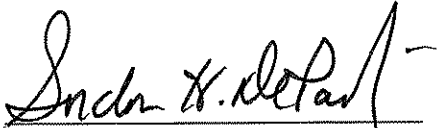
5 **IV. Separate Status Conferences in Subfiles C-125-B and C-125-C.**

6 The Walker River Irrigation District (the "District") is not opposed to the Court setting  
7 a status conference in Subfile C-125-B. Similarly, the District is not opposed to the Court  
8 setting a status conference in Subfile C-125-C. For the convenience of the Court, the parties  
9 and their counsel, both status conferences could be set for the same day. Indeed, the Court has  
10 done this in the past. However, unless and until a motion for consolidation has been filed and  
11 briefed, and the Court has entered an order consolidating these two proceedings, the status  
12 conferences must and properly should remain separate and distinct.  
13

14 Finally, in the event that the Court decides to schedule a separate status conference in  
15 each of Subfile C-125-B and Subfile C-125-C, the District respectfully requests that the Court  
16 also establish a schedule for the parties to file Status Reports in connection with each Subfile  
17 several days prior to the date set for each status conference. Such an exchange of Status  
18 Reports prior to each status conference will be beneficial to the Court and to the participating  
19 parties.  
20

21 DATED this 9th day of August, 2010.

22 WOODBURN AND WEDGE

23  
24 By:   
25 Gordon H. DePaoli  
26 Dale E. Ferguson  
27 6100 Neil Road, Suite 500  
28 Reno, Nevada 89511  
Attorneys for WALKER RIVER  
IRRIGATION DISTRICT

**CERTIFICATE OF SERVICE**

I certify that I am an employee of Woodburn and Wedge and that on the 9th day of August, 2010, I electronically served the foregoing *Walker River Irrigation District's Response To Joint Motion of Mineral County, Walker River Paiute Tribe, and United States of America To Set Status Conference On Pending Issues* with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties of record via their email addresses.

I further certify that I served a copy of the foregoing to the following non-CM/ECF participants by U.S. Mail, postage prepaid, this 9<sup>th</sup> day of August, 2010:

Robert L. Auer  
Lyon County District Attorney  
31 S. Main St.  
Yerington, NV 89447

Jeff Parker  
Deputy Atty. General  
Office of the Attorney General  
100 N. Carson St.  
Carson City, NV 89701-4717

Wesley G. Beverlin  
Malissa Hathaway McKeith  
Lewis, Brisbois, Bisgaard & Smith LCP  
221 N. Figueroa St., Suite 1200  
Los Angeles, CA 90012

Todd Plimpton  
Belanger & Plimpton  
1135 Central Ave.  
P.O. Box 59  
Lovelock, NV 89419

Leo Drozdoff  
Dir. of Conservation & Natural Resources  
State of Nevada  
901 S. Stewart St.  
Carson City, NV 89701

William W. Quinn  
Office of the Field Solicitor  
Department of the Interior  
401 W. Washington St., SPC 44  
Phoenix, AZ 85003

Tim Glidden  
U.S. Dept. of the Interior, Office of the  
Secretary, Div. of Indian Affairs  
1849 C St. N.W.  
Mail Stop 6456  
Washington, D.C. 20240

Marshall S. Rudolph, Mono County Counsel  
Stacy Simon, Deputy County Counsel  
Mono County  
P. O. Box 2415  
Mammoth Lakes, CA 93546-2415

Nathan Goedde, Staff Counsel  
California Dept. of Fish and Game  
1416 Ninth St., #1335  
Sacramento, CA 95814

William E. Schaeffer  
P. O. Box 936  
Battle Mountain, NV 89820

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28

Mary Hackenbracht  
Deputy Attorney General  
State of California  
1515 Clay St., 20<sup>th</sup> Floor  
Oakland, CA 94612-1413

Robert L. Hunter, Superintendent  
Western Nevada Agency  
Bureau of Indian Affairs  
311 E. Washington St.  
Carson City, NV 89701-4065

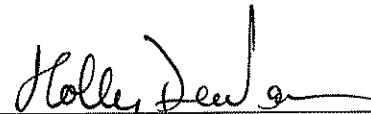
Jason King  
Division of Water Resources  
State of Nevada  
901 S. Stewart St.  
Carson City, NV 89701

Timothy A. Lukas  
P.O. Box 3237  
Reno, NV 89505

James Shaw  
Water Master  
U.S. Board of Water Commissioners  
P.O. Box 853  
Yerington, NV 89447

Kenneth Spooner  
General Manager  
Walker River Irrigation District  
P.O. Box 820  
Yerington, NV 89447

Garry Stone  
U.S. District Court Water Master  
290 S. Arlington Ave., 3rd Floor  
Reno, NV 89501



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Holly Dewar